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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 323 (JSR)

5 EZRA CHOWAIKI,

Sentence

6 Defendant.

7 -----x

8 New York, N.Y.  
9 September 27, 2018  
12:00 a.m.

10  
11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the  
Southern District of New York

17 BY: DANIEL M. TRACER

Assistant United States Attorney

18 PARKER & CARMODY, LLP

19 Attorneys for Defendant

20 BY: DANIEL S. PARKER

CHRISTINA S. COOPER

-and-

21 GALLET DREYER & BERKEY, LLP

22 BY: ROGER L. STAVIS

23 Also Present: Elizabeth Massey, Senior Law Clerk

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(Case called)

MR. TRACER: Daniel Tracer, for the government. I'm joined by our office's senior law clerk, Elizabeth Massey. Good afternoon, your Honor.

THE COURT: Good afternoon.

MR. PARKER: Good afternoon, your Honor. Daniel Parker, appearing on behalf of Mr. Chowaiki, along with Christina Cooper, from my office, and Roger Stavis, who is representing Mr. Chowaiki in related civil proceedings.

THE COURT: Good afternoon.

We're here for sentence. The probation office has calculated the total offense level as 24, the criminal history category as I, and therefore, the guideline range, which is not binding on the Court but which the Court must consider, is 51 to 63 months.

I take it the parties are agreed that is the guideline calculation. Yes?

MR. TRACER: We agree, your Honor.

MR. PARKER: Yes, your Honor.

THE COURT: Very good.

The probation office recommends a sentence of 36 months. Defense counsel recommends a sentence of a year and a day, and the government asks for a sentence around the guideline range. As usual, total agreement.

Let me hear first from defense counsel, then from

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1 government counsel, and then from the defendant, if he wishes  
2 to be heard.

3 MR. PARKER: On behalf of Mr. Chowaiki, your Honor, I  
4 know, because I know your Honor has read and is very familiar  
5 with all of the facts and circumstances of the sentencing  
6 submission on behalf of both parties, so I'm going to just  
7 highlight what I think are some salient points, which I would  
8 urge the Court to consider.

9 The first thing I would like to just emphasize is that  
10 sitting next to me, the defendant in this case, is a very, very  
11 good person who made some very serious misjudgments and errors,  
12 for which he is truly sorry and has exhibited remorse from the  
13 inception of this case.

14 Your Honor is aware, as you just said, that probation  
15 is recommending a sentence less than the guidelines. I would  
16 say that this Court has been in the forefront of courts  
17 recognizing that guidelines sentences are not necessarily a  
18 measure of a person's culpability, and I would say that this  
19 Court has been at the forefront of recognizing that not only in  
20 this building but perhaps nationwide.

21 I think that it is important to understand that the  
22 loss factor in this case, which has driven the guidelines to  
23 these high numbers, is something that is really not indicative  
24 of the level of Mr. Chowaiki's criminal conduct.

25 THE COURT: I agree with that totally in the sense

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1 that I agree with the first part of what you said, which is  
2 that the loss guidelines are among the more bizarre features of  
3 the sentencing guideline regime. It is amazing to me how much  
4 they distort the situation that the Court confronts, not just  
5 in this case but in innumerable cases, so you don't need to  
6 spend more time about the guidelines. I'll hear from the  
7 government, of course, but subject to their changing my mind,  
8 the guidelines are, in my view, not very important in this  
9 case.

10 What I am concerned about are two things that you  
11 might want to respond to.

12 The first is that some of the effects of this fraud  
13 had fairly devastating effects. I'm thinking particularly of  
14 one of the victim impact statements that we got. It was from  
15 Dr. Bogomila Welsh-Ovcharov, who, in effect, alleges that the  
16 fraud, as perpetrated on her, not only caused her tremendous  
17 economic harm but emotional harm as well.

18 The second issue that you might want to address is  
19 that one gets the impression from this and other cases, and the  
20 government, I think, made reference to this in their papers,  
21 that the art markets, so to speak, are very poorly regulated,  
22 if at all, which places, perhaps, a greater burden on the Court  
23 in terms of general deterrence than it might otherwise be  
24 called upon to consider.

25 I'm happy to hear, of course, everything else you

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1 said. I've read the many letters you submitted. They all  
2 attest to the overall good character of the defendant. They  
3 are important to the Court, very important to the Court. I  
4 always think that when it comes to sentencing, the singlemost  
5 important question for the Court is the nature of the human  
6 being I have before me, and I think you have shown in those  
7 letters that outside these terrible events that led us to  
8 today, he has conducted himself with considerable honor. There  
9 were even two letters from victims who nevertheless felt that  
10 they had to attest to his good character.

11 All of that I take -- again, subject to hearing from  
12 the government -- as well established, but I'm concerned more  
13 about the other issues that I just mentioned.

14 MR. PARKER: Addressing the two issues of your Honor's  
15 immediate question, one is the victim impact letter from  
16 Ms. Bogomila Welsh-Ovcharov.

17 THE COURT: There were three impact letters, but this  
18 is the one that was most on point.

19 MR. PARKER: Yes, and as I said in my sentencing  
20 submission, that letter is not what I would submit is  
21 indicative really of who Mr. Chowaiki is in terms of his entire  
22 persona, history and character, and that letter is the one  
23 that, like your Honor, affected him the most, for which there's  
24 no doubt that he is extraordinarily remorseful and upset.

25 Fortunately, I believe, and I've conferred with the

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1 government, that of the 23 paintings at issue in this case, 18  
2 are either in the government's possession or control, or  
3 certainly they're in the process of securing them.

4 THE COURT: I assume they're all hanging on the  
5 assistant's wall right now.

6 MR. PARKER: I won't comment, but I've seen  
7 Mr. Tracer's office, and it looks like it's decorated --

8 THE COURT: More spartan.

9 MR. PARKER: It looks like it's decorated in a little  
10 bit more institutional art.

11 But I believe that the artwork belonging to this  
12 particular victim is artwork that will be ultimately returned  
13 to her. While that doesn't excuse his conduct with respect to  
14 her, it does provide some means for the Court to say that she  
15 is in all likelihood to get that artwork back when this sort of  
16 mess is cleared out.

17 In terms of the Court's second concern about the  
18 unregulated artwork in general, I think that, of course, is a  
19 very legitimate concern, but at the same time, one, this isn't  
20 the case where, as the government cites in its sentencing memo,  
21 people engaged in fraudulent art transactions for three, six,  
22 etc., from the inception.

23 So when you're evaluating what is a proportional  
24 sentence, which I think both parties agree is important for the  
25 Court's consideration, the proportionality of what he did

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1 relative to what people who received a sentence, let's say,  
2 from Judge Kaplan of 41 months, where, for nine years, someone  
3 sold fake art, that's something that is intended from the  
4 beginning, to steal property from people. And that's not what  
5 Mr. Chowaiki did in this case.

6 And nothing I say -- I'm not saying anything that  
7 should be viewed as his denying his responsibility for this or  
8 in that vein, but there is a difference, at least in my  
9 opinion, as to someone who intentionally engages in fraudulent  
10 conduct from the inception and does it over and over, and then,  
11 when confronted, lies about it with the FBI, etc., as opposed  
12 to this person, who ran a legitimate, well-respected business,  
13 and for reasons set forth in my memo, engaged in conduct for  
14 which he's truly sorry. And then when everything came to a  
15 halt, he not only voluntarily tried to offer assistance to the  
16 government to help clean up the mess, but he ultimately  
17 provided assistance to, for example, another victim in this  
18 case by setting forth his art expertise.

19 And he remains, as the prosecutor knows, because we  
20 had telephone calls in which we voluntarily said, We will help  
21 you identify, and we did. We offered, and we said, This is  
22 where this artwork can be located. This is not a person who  
23 did anything other than try to right the wrongs that he  
24 regrets.

25 In terms of what your Honor said about -- I've been

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1 told; I've never been a judge -- that judges view sentencings  
2 as one of the most challenging and difficult things that they  
3 have to do.

4 With that in mind, your Honor has said that you view  
5 the person as the critical factor. And emphasizing the history  
6 and character of this human being, I think that I've outlined  
7 in my sentencing submissions not only who he was, not only all  
8 the letters about what an extraordinary person he was, the fact  
9 that there is a courtroom filled with people here today  
10 demonstrating their commitment and support of him, to emphasize  
11 to your Honor, in a way saying, Please exercise your judgment  
12 in a reasonable way, recognizing that he's going to be  
13 punished. But it's not just his extraordinary character and  
14 the support of loved ones, but it's the psychological issues  
15 that affected his judgment, which were documented, which make  
16 sense in explaining his behavior here and, again, followed by  
17 his postarrest conduct, which I would submit is mitigation.

18 In terms of the proportionality that I've addressed, I  
19 think it was Judge Learned Hand who may have expressed the  
20 importance of a judge exercising sentences that are  
21 proportional and relevant in evaluating a person's criminal  
22 culpability.

23 THE COURT: I think we can take it as a given if there  
24 is anything worth quoting ever said, it was said by Learned  
25 Hand.



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1 MR. PARKER: I think that's right.

2 There are defense attorneys who submit sentencing  
3 submissions asking for what they think, what they really  
4 believe is not a reasonable sentence but on the low end,  
5 knowing the government is going to come in, pursuant to policy,  
6 and recommend guidelines or on or about guidelines, and I'm  
7 hoping that the Court will --

8 THE COURT: Mr. Parker, it's been my great pleasure to  
9 have you before me many times, and one of the reasons is your  
10 high credibility. I was very pleased to see that you were not  
11 making a pitch for no jail time, which would have been, I  
12 think, unconvincing to the Court, so I appreciate where you're  
13 going.

14 MR. PARKER: I always appreciate your Honor's kind  
15 words, but what I would say is that the government asked the  
16 Court to impose a substantial period of incarceration.

17 For this man, who's led this life, which brought him  
18 to this tragic day in his life, any period, a period of a year  
19 incarceration is a substantial sentence for him, and it would  
20 represent a terrible, terrible thing that he would have to go  
21 through, and he understands that.

22 At the same time, it would serve the general and the  
23 specific deterrence that this Court is concerned about. I  
24 think all the factors set forth in 18 U.S.C. 3553 include not  
25 only the impact on the individual victims in this case but also

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1 the broader schemes of punishment and what it's designed to  
2 achieve, and it is for those reasons that I'm asking your Honor  
3 to impose a sentence of a year and a day. We submit that it is  
4 reasonable. It is not more than necessary. It is completely  
5 appropriate. It is called for based on his acts, his history,  
6 his character and what transpired in this case.

7 Thank you.

8 THE COURT: Thank you very much.

9 Let me hear from the government.

10 MR. TRACER: Sure. Thank you.

11 Good afternoon, your Honor.

12 I wanted to make three points. I think two of them  
13 relate to the points I think your Honor rightly focused on in  
14 this case. One is the harm to the individual art owners that  
15 were defrauded.

16 Your Honor has seen the victim impact statements,  
17 particularly the one of Dr. Welsh-Ovcharov and the impact that  
18 this had on her. I think what's significant here is that  
19 people like Dr. Welsh-Ovcharov went to Mr. Chowaiki because he  
20 held himself out as an expert in the field, as someone who ran  
21 a reputable gallery, and it's a significant part of the crime  
22 that was committed here.

23 One of the reasons I wanted to hand up in advance the  
24 restitution order, which I'll have some additional things to  
25 say about after to your Honor, is just so your Honor can see

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1 sort of our most up-to-date thinking on the loss amount and the  
2 victims here. It's a loss in excess of \$10 million,  
3 notwithstanding, I think, the point that defense counsel has  
4 rightly made, that works of art are particularly subject to  
5 market differences from time to time, so the number is not  
6 necessarily always an accurate number, but it's about two dozen  
7 paintings, and it is certainly millions and millions of dollars  
8 of artwork taken from multiple --

9 THE COURT: Yes. There's no doubt that this was a  
10 substantial crime when viewed financially.

11 My problem with the guidelines is the gross weight,  
12 overweight that they place on loss. In a typical white collar  
13 case, the loss amount is responsible for 70 percent of the  
14 calculation of the offense level, and that seems to me totally  
15 oblivious to the many other factors that any reasonable court  
16 should take into account in this very sensitive area of  
17 sentencing. But I don't suggest for a moment, and I don't  
18 think defense counsel suggests for a moment, that this wasn't a  
19 substantial fraud, on any possible view of it. Whether it was  
20 9 million, 12 million, whatever, it was a lot of money, a lot  
21 of fraud and involving a long period of time.

22 MR. TRACER: We understand that, your Honor, and I  
23 think that your Honor has certainly been very public about that  
24 opinion.

25 To that point, I should say that the government

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1 doesn't think that a sentence -- and I say approximately the  
2 guideline range here. It is not because it is the guidelines  
3 range here. It's because of the other factors, and this is a  
4 good segue to the other points about, I think, the general  
5 market issues here as well as what we flagged for your Honor as  
6 some data points, understanding that no comparison is perfect,  
7 and I'll get to those in a minute.

8 In terms of the market, I think, to the second point  
9 your Honor made, the art market is a particularly vulnerable  
10 market. And in particular in this case, and we quoted some of  
11 the language in our brief -- I don't mean to compare the  
12 defendant to another defendant that your Honor sentenced, Marc  
13 Dreier, but I do think some of the sentiments that your Honor  
14 expressed in some of the opinions dealing with the forfeiture  
15 aspect of that case are apt in this circumstance.

16 We have a case where, because of the hard work of the  
17 FBI, most of the paintings were recovered in this case, and  
18 they are now -- just for your Honor, they are not in my office.  
19 They are at a storage gallery called Day & Meyer on the Upper  
20 East Side, which is a reputable art institution, and we do  
21 have, therefore, most of those paintings.

22 As it turns out, we don't have the one that is the  
23 subject of Dr. Welsh-Ovcharov's claim, but nevertheless, we do  
24 have most of them. But the process of getting them back to  
25 their owners will not be simple. As your Honor has seen on the

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1 docket, there are multiple claims to almost every painting, and  
2 that's something that I'm sure we will take up in due course  
3 with the Court, but it's one of the effects of fraud and,  
4 again, ought to be taken into account here.

5 The third points I'll make, unless your Honor has any  
6 questions, is just some of the comparison points we felt were  
7 appropriate for your Honor. We looked at some of the art fraud  
8 cases that have been brought and sentenced in this district  
9 over the last few years.

10 In the John Re case, Judge Castel sentenced him to 60  
11 months in prison. Granted, the scheme lasted over a longer  
12 period of time; it was a nine-year scheme involving over \$2  
13 million of loss, so the loss amount there is less, whereas it's  
14 more here.

15 I certainly agree with Mr. Parker that it is a  
16 different crime selling fake art versus defrauding people of  
17 their real art. In terms of which one's worse, it's hard to  
18 say, and it depends on the circumstances, but I do think it is  
19 a sort of relevant point of comparison in a case like this.

20 Likewise, Judge Kaplan sentenced a defendant named  
21 Spoutz to 41 months in prison, also for selling fake art, so in  
22 that sense different than this case, but in a scheme that  
23 involved about 1.5 million in loss. And so when you see  
24 numbers like those, I think, and our guideline range here being  
25 in the 50- to 60-month range, it appears as if that sentence is

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1 within the sort of norm for sentences imposed on relatively  
2 comparable defendants within this district, under similar  
3 circumstances.

4 THE COURT: The difficulty I always have with those  
5 kinds of comparisons hearkens back to the point I made to  
6 defense counsel.

7 There is, in this Court's view, a huge difference  
8 between someone who is a basically good person, conducts his  
9 life in an honorable fashion and even laudable fashion, and  
10 nevertheless, for economic-pressure reasons or otherwise, is  
11 led into very serious criminal activity versus someone who is  
12 heedless of other people, who spends his life as a living  
13 fraud. I hate to say it, but that was true of Marc Dreier, and  
14 it was one of the reasons I imposed such a high sentence in  
15 that case.

16 To me, it still comes back down -- it's not the only  
17 factor, of course; I have to consider all the factors under  
18 Section 3553(a), and they're all important -- but to me, the  
19 factor that weighs very heavily is the nature of the human  
20 being before me.

21 The defense suggestion is that unlike, perhaps, some  
22 of the people you're referring to in those other cases, though  
23 I don't know that much about the nature of the human beings  
24 there, here we have an essentially good man who did a very bad  
25 thing.

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1 Do you disagree with that?

2 MR. TRACER: We don't, your Honor. We don't dispute  
3 that the factual circumstances -- and I think it is  
4 significant, I will say that his acceptance of responsibility  
5 was very quick and fulsome in this case. I do not dispute  
6 that.

7 THE COURT: OK. Anything else you wanted to tell me?

8 MR. TRACER: No, your Honor.

9 THE COURT: Thank you very much.

10 MR. PARKER: Before you hear from Mr. Chowaiki, may I  
11 very briefly respond?

12 THE COURT: Yes.

13 MR. PARKER: And I appreciate the government's  
14 acknowledgement that Mr. Chowaiki accepted responsibility  
15 quickly, because he did, and the parties knew that.

16 I would just remind the Court, in my reply memorandum,  
17 I set forth the factors of the relative culpability of the  
18 individuals who the government references, specifically,  
19 Mr. Spoutz, who was sentenced by Judge Kaplan, who did engage  
20 in this for, intentionally committed fraud for a long period of  
21 time and then lied to the FBI, etc., as well as Mr. Re, who was  
22 sentenced by Judge Castel, who had a lengthy criminal history,  
23 and apart from everything else, basically, even at sentencing,  
24 denied his acceptance of responsibility and sort of, what I  
25 submit, was dishonest with the Court representing where the

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1 proceeds of that had gone to.

2 In terms of evaluating the relative culpability of  
3 Mr. Chowaiki, that's just something I want to remind your  
4 Honor.

5 THE COURT: Thank you very much.

6 Let me hear from the defendant if he wishes to be  
7 heard.

8 THE DEFENDANT: Thank you, your Honor.

9 I'm a little nervous.

10 Over the last year, I've tried very hard to figure out  
11 how it is that I ended up doing what I did. For so long, I  
12 built a business based on integrity, scholarship and  
13 professionalism. Lying and scheming were antithetical to my  
14 company. And for many years, even through difficult  
15 circumstances, I adhered to those core values.

16 This is why it's so hard for me and for the people  
17 that know me to understand why I allowed myself to do something  
18 so terrible. Why did I let my brain take a wrong turn? Why  
19 did I allow myself to make the biggest mistake of my life?

20 I want to be clear. What I did -- all my actions --  
21 were wrong. I'm not someone without morals. I know right from  
22 wrong. So why did I do it all?

23 The short answer, which is by no means an excuse, is I  
24 got desperate. My company had suffered such bad hits, not just  
25 in recent years but for years prior. I trusted people that I



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1 should not have trusted, but just as bad, I trusted my own  
2 flawed instincts. In times I should have been cautious, I went  
3 ahead with decisions that were, in hindsight, foolish and which  
4 made my company lose money. Some of these losses were within  
5 my control and some were not, but what was absolutely in my  
6 control was how I tried to rectify these losses. I did that by  
7 lying and defrauding people, and the most abhorrent part of it  
8 for me is that some of these people were my friends and people  
9 who trusted me.

10 I still do not understand how I could do such a thing,  
11 but I did. And even if mental health issues are involved, I do  
12 not want to hide behind any of that. I take full ownership of  
13 my actions.

14 I will say that I never meant to hurt anyone. In  
15 fact, I was foolishly hoping that I could move things around to  
16 keep my company afloat long enough for me to conclude a large  
17 enough deal or two to bail me out. I was reckless with other  
18 people's money and property, and I deluded myself into thinking  
19 that I could keep everyone in the dark until that elusive big  
20 score. I'd had big successes before, and I hoped to be able to  
21 reimburse those who I had taken from. Of course, this is  
22 wrong, not just because those big deals cannot be counted on,  
23 but because I was using someone else's money and property, and  
24 trust, trust that took me years to build.

25 I cannot be more sorry. Many people felt betrayed by

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1 me, and I truly feel I did betray them. Many people who  
2 vouched for me or introduced me to others, for example, may not  
3 have suffered direct losses but were nevertheless adversely  
4 affected by my actions towards the people to whom they  
5 recommended me. And they are victims too.

6 My children have been affected. They have had to deal  
7 with humiliation and shame; my ex-wife too, and my friends, my  
8 brothers, my mom. Just considering this is almost too much to  
9 bear.

10 To all those people -- my victims -- both direct and  
11 indirect, I would like to apologize. To my victims, I am so,  
12 so sorry for how I lied and misled you. I am so sorry for  
13 mistreating you like this. To my indirect victims, I'm sorry I  
14 misused your trust in me.

15 Over the last year, not only have I been shamed and  
16 shunned and excommunicated, I've lost my career and livelihood.  
17 I've had to rely on friends who have graciously housed me and  
18 supported me, something which has made me grateful and ashamed.  
19 And probably most tragically, I have ruined my relationship  
20 with my children. I hope in time that they, like others, will  
21 be able to forgive me and I can repair relationships that I've  
22 so badly damaged.

23 I would have ended my remarks here, but my friends  
24 have advised me to say some things to hopefully illustrate for  
25 you who I am. I must say I'm exceedingly uncomfortable

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1 pointing out these qualities, especially because I do not feel  
2 much pride anymore.

3 I'm a charitable person. I have given all my life,  
4 not just money but those more elusive assets, time and effort.  
5 I, along with my ex-wife and kids, for many years have welcomed  
6 inner city kids to live with us months at a time. During all  
7 that time, I -- we -- have remained involved in their lives.

8 I have actively participated in charitable  
9 organizations like Ronald McDonald House, the Special Olympics  
10 and, most recently, God's Love We Deliver, where I have  
11 volunteered throughout the last year. I truly hate that I have  
12 to enumerate these activities in an effort to seek leniency. I  
13 never did them for points or recognition. In fact, I hardly  
14 told anyone about them. I mention these things because I want  
15 you to know who I am, a good person who did terrible things,  
16 for which I cannot be more sorry.

17 I hope to be able to pay back the people who I have  
18 harmed, not just financially but emotionally. I intend on  
19 spending the rest of my life paying them back and to rebuild my  
20 reputation which I worked so hard to build. I'm gratified that  
21 all -- or most -- of the works will be returned to their  
22 rightful owners. I am thankful that the FBI will do what I  
23 could not do.

24 People say that all this will be over one day. I  
25 truly hope so, because right now, I cannot imagine it ever

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1 will.

2 Thank you for giving me the opportunity to address  
3 you.

4 THE COURT: Thank you very much.

5 I think the Court has already identified the factors  
6 that I think are particularly prominent in this case.

7 On the one hand, this was a substantial fraud, carried  
8 out intentionally, knowingly, willfully over a prolonged period  
9 of time. On the other hand, everything else in the defendant's  
10 character is positive. The statement he just made confirms in  
11 the Court's own mind the good qualities that he exhibited over  
12 a great deal of his life.

13 Always the hardest question, or among the hardest  
14 questions, for any court in imposing sentence is the question  
15 of general deterrence. Sociologists have attempted to study  
16 this, without, frankly, much success. We know the extremes.  
17 We know that life imprisonment has a greater deterrent effect  
18 than three months of imprisonment, but we don't know much  
19 beyond that, from a scientific or sociological standpoint.

20 There is some data that suggests that with respect to  
21 white collar crimes, an absence of any imprisonment has a  
22 negative effect in terms of general deterrence, that it doesn't  
23 achieve general deterrence, but that modest imprisonment has a  
24 greater impact in this area than it does in some other areas of  
25 criminality. But all of this is soft and is not well

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1 established.

2 Sometimes general deterrence, frankly, can be just an  
3 excuse for a court to say that they really want to impose a  
4 heavy sentence in order to "send a message." I'm not  
5 suggesting that that is the intent of those judges who say  
6 that, but I am suggesting that it does not grapple with the  
7 moral question of what is sufficient to send a message, but no  
8 more than necessary, in terms of punishing the human being in  
9 front of the court.

10 Counsel is quite right. All judges find sentencing to  
11 be extremely difficult, and not just because of the humility  
12 with which any human being should approach imposing anything as  
13 harsh as imprisonment on any other human being but also because  
14 of the difficulties in finding what is the right sentence in  
15 the Court's view. I don't want to spend too much time on the  
16 sentencing guidelines, because that's not the heart of this  
17 sentence in any respect.

18 The guidelines, in this Court's view, are a foolish  
19 attempt to relieve judges of that difficult burden they face  
20 through a totally artificial and often irrational numbers game,  
21 and in my view, it's just an evasion of judicial  
22 responsibility.

23 One factor that does loom importantly for the Court in  
24 this case is the somewhat unregulated -- "somewhat" may be the  
25 wrong adjective -- the seemingly unregulated nature of the art

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1 market.

2 Here, we have something that, by its very nature,  
3 calls for expertise and knowledge and can easily be the subject  
4 of fraud, and yet, it seems to operate without any meaningful  
5 constraints except those imposed by the character of the  
6 persons involved in it, so I think that does weigh modestly in  
7 favor of a higher sentence. But on the other hand, the very  
8 cases that the government cites, as further elucidated by  
9 defense counsel, will illustrate how different those cases are  
10 from this case.

11 This is not a case of the kind of forged art, for  
12 example, or a total sham entity set up for the purpose of  
13 committing financial fraud, or the like. I'm going on at such  
14 length because I find this a particularly difficult sentence,  
15 but in the end, I think that Congress was very wise when it  
16 instructed the courts to sentence a defendant for the term of  
17 imprisonment sufficient to carry out the various functions of  
18 sentencing, as set forth in Section 3553, but no more than  
19 necessary for that.

20 This is the Occam's razor of sentencing, and it makes  
21 a lot of sense to me, so while I worry a little bit that this  
22 sentence may be, in this Court's view, a little too lenient,  
23 I'm going to impose an 18-month sentence.

24 The sentence of the Court is that the defendant is  
25 sentenced to 18 months in prison to be followed by three years

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1 of supervised release under terms I'll get to in a moment.

2 No fine will be imposed because there will be a very  
3 substantial restitution, which we'll talk about in a moment.

4 There is, however, a mandatory \$100 assessment that  
5 also must be paid.

6 The terms of supervised release are, first, the  
7 mandatory conditions that the defendant must not commit any  
8 other federal, state or local crime;

9 That the defendant must not unlawfully possess a  
10 controlled substance.

11 The drug-testing condition, however, will be suspended  
12 based on the Court's determination that the defendant faces a  
13 low risk of future substance abuse.

14 However, the further mandatory condition, that the  
15 defendant cooperate in the collection of DNA, will be imposed.

16 There will also be imposed the standard conditions of  
17 supervision, 1 through 13. They appear on the face of the  
18 judgment and will be gone over with the defendant by the  
19 probation officer when the defendant reports to begin his  
20 period of supervised release.

21 And then there are the special conditions, but before  
22 we turn to the special conditions, I have the proposed order of  
23 restitution in the amount of \$12,899,980.

24 Is that order a consent order? Do both sides agree to  
25 that or not?

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1 MR. TRACER: I believe the defense has agreed to that.

2 MR. PARKER: We have, but we have also, I think, a  
3 joint application with respect to the order of restitution, and  
4 so I'll let Mr. Tracer make that application.

5 THE COURT: OK.

6 MR. TRACER: Sure.

7 Your Honor, we do agree with it. Your Honor has the  
8 ability to delay restitution up to 90 days, and perhaps more,  
9 if the defendant agrees.

10 This restitution order has some unique provisions in  
11 it, and in particular, this provision about if the work goes  
12 back to the particular victim, as spelled out in paragraph 1,  
13 the restitution -- essentially the defendant gets credited for  
14 that. The forfeiture order in this case works similarly.

15 Because we do think there is some work to do in terms  
16 of sorting out the ownership of the paintings, we would propose  
17 that the Court hold off on entering this order, because those,  
18 as I'll get to in a moment, those sort of proceedings, the  
19 ancillary proceedings may result in, by settlement, we think,  
20 many of the paintings --

21 THE COURT:

22 That's fine. Forgive me for interrupting. I'm happy  
23 to do that for the 90 days. I'm not happy to do it for more  
24 than that, so don't come back and ask for more. Whatever you  
25 can do in 90 days, fine. Otherwise, work it into the order, as



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1 you already have, that there are future credits that may be  
2 applied, but I don't want to leave this hanging beyond 90 days.

3 MR. TRACER: Thank you.

4 THE COURT: The special conditions of supervised  
5 release are, first, that the defendant must provide the  
6 probation officer with access to any requested financial  
7 information;

8 Second, that he must not incur any new credit charges  
9 or open additional lines of credit without the approval of the  
10 probation officer unless he is in compliance with the  
11 installment payment schedule. Although we don't have the  
12 amount yet, the installment payment schedule will be 15 percent  
13 of the defendant's gross monthly income beginning with the  
14 second month of supervised release.

15 Finally, the last special condition is that the  
16 defendant must report to the nearest probation office within 72  
17 hours of his release from prison, and he will be supervised by  
18 the district of his residence.

19 Now, before I advise the defendant of his right of  
20 appeal, we need to know about surrender date and also anything  
21 else counsel wants to raise.

22 Anything else from the government?

23 MR. TRACER: I would like, your Honor -- I think this  
24 is the right time to do it -- to raise the issue of sort of  
25 sorting out these additional claims. I can do that now or we

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1 can wait until after.

2 THE COURT: No. I mean, I think we need to set up  
3 hearings, but don't you need to have the relevant people  
4 present? Why don't you just do that by giving me a phone call  
5 with each of them, and we'll individually set up those  
6 hearings.

7 MR. TRACER: We can do that, your Honor.

8 If I can give a little context, there are 21 parties  
9 that are parties to this, and I have spoken to the trustee, who  
10 is here today and has been helpful in this process. He's  
11 actively pursuing settlements with a lot of them, and so one of  
12 the things -- and in addition, I should add, I think, before a  
13 hearing is held, there would be an opportunity to move to  
14 dismiss some of the petitions, which I think we would do if  
15 some of the cases don't settle.

16 THE COURT: Again, forgive me for interrupting, but I  
17 want to move this along.

18 I have no problem waiting. I would say the most I'd  
19 be willing to wait is two months.

20 MR. TRACER: OK.

21 THE COURT: If he can settle a lot of them before  
22 then, terrific. Great. After two months, with respect to any  
23 open matters, whether it's a matter of moving to dismiss or a  
24 matter of having an evidentiary hearing, or whatever, you will  
25 need to convene with the Court a conference call with each of

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1 the relevant people for each of those situations on the phone.  
2 And we'll set dates for the proceedings.

3 MR. TRACER: OK. That sounds -- thank you, your  
4 Honor.

5 THE COURT: Anything from the defense?

6 MR. PARKER: I believe the government does not object  
7 to a self-surrender on this case, so I would just ask the Court  
8 to set a date for it.

9 THE COURT: Yes, let's do that now.

10 MR. PARKER: I would also ask that your Honor adopt  
11 our request that you recommend, to the extent eligible, that he  
12 be designated to the satellite camp at FCI Otisville.

13 THE COURT: Yes, I will certainly recommend that. As  
14 I'm sure you've told your client, I have no power to order it,  
15 but I can recommend it, and I will.

16 MR. PARKER: I've told my client that most courts have  
17 no powers but that this Court has unique powers.

18 THE COURT: Right. You'd better talk to my wife. She  
19 will disillusion you.

20 Let's get the surrender date.

21 THE DEPUTY CLERK: Thursday, November 8, by 2 p.m.

22 MR. PARKER: Would the Court consider a longer date?  
23 He's not a flight risk. He's been completely compliant with  
24 his pretrial services officer.

25 THE COURT: I would consider a later date in November.

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1 I wouldn't consider beyond November.

2 MR. PARKER: Does November have 31 days, your Honor?

3 THE COURT: It only has 30.

4 MR. PARKER: Then that would be the request.

5 THE COURT: Friday, November 30, at 2 p.m.

6 MR. PARKER: In all candor, actually, I'm not sure he  
7 will be designated by then. It takes time.

8 THE COURT: We factored that into the date we gave,  
9 but in our experience, they're able to do it in approximately  
10 45 days.

11 MR. PARKER: November 30 at 2; is that what your Honor  
12 said?

13 THE COURT: Yes. Obviously, if he hasn't been  
14 designated, we'll extend it accordingly.

15 Mr. Chowaiki, you have the right to appeal this  
16 conviction.

17 Do you understand that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: This sentence, I should say. And if you  
20 don't have funds to retain counsel for the appeal, the Court  
21 will appoint one for you free of charge.

22 Do you understand that?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: Very good.

25 (Adjourned)